

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUAN M. VAZQUEZ,

Plaintiff,

-against-

CITY OF NEW YORK, *et al.*,

Defendants.

21cv01573 (PAE) (DF)

**ORDER**

**DEBRA FREEMAN, United States Magistrate Judge:**

In February 2021, plaintiff Juan M. Vazquez (“Plaintiff”), proceeding *pro se*, commenced this Section 1983 action, naming, as defendants, 31 individuals and entities that had allegedly violated Plaintiff’s constitutional rights in connection with his incarceration and certain underlying state court criminal proceedings. On May 17, 2021, the Honorable Paul A. Engelmayer, U.S.D.J., issued an Order (the “5/17/21 Order”) (Dkt. 12), *sua sponte* dismissing, without prejudice, certain of Plaintiff’s claims for lack of standing or for failure to state a claim, and granting Plaintiff leave to replead his claims to the extent they alleged unconstitutional conditions of confinement at Riker’s Island. Plaintiff then proceeded to move for leave file an amended complaint, a copy of which he attached to his motion. (*See* Dkt. 18 (attaching Proposed Amended and Supplemental Complaint (“Proposed Amended Complaint” or “Proposed Am. Compl.”) (Dkt. 18-1).) Separately, Plaintiff also moved for various types of immediate relief, including a temporary restraining order and preliminary injunction, and for Judge Engelmayer’s recusal. (Dkts. 16, 17.) On July 30, 2021, Judge Engelmayer issued a second Order (the “7/30/21” Order) (Dkt. 21), denying those additional requests in their entirety.

Now before this Court, to which this case has been referred for general pretrial supervision (Dkt. 15), is Plaintiff’s still-pending motion for leave to file his amended pleading

(Dkt. 18). Upon this Court's careful review of Plaintiff's Proposed Amended Complaint to ensure that it conforms to Judge Engelmayer's prior rulings (as set out in both the 5/17/21 Order and the 7/30/21 Order), it is hereby ORDERED as follows:

1. Plaintiff's motion for leave to file an amended pleading (Dkt. 18) is granted; Plaintiff's Proposed Amended Complaint (Dkt. 18-1) shall be deemed his "Amended Complaint"; and, as such, it shall be accepted for filing, except to the following extent:

a. As Judge Engelmayer has already found that venue is not proper in this District with respect to Plaintiff's claims arising out of his incarceration at the Attica Correctional Facility ("Attica") (*see* 5/17/21 Order), and as Plaintiff's claims against certain of the named defendants relate only to that period of incarceration, the following named defendants shall be stricken from the caption:

- i. John Morley, Director of Health for the New York State Department of Corrections and Community Supervision ("DOCCS");
- ii. Kay Arnold, Director of Health for Attica; and
- iii. David Williams, Supervising Physician for Attica;

b. for the same reason (*i.e.*, lack of proper venue in this District, as set out in the 5/17/21 Order), Plaintiff's claim for a mandatory injunction for the provision of proper medical treatment at Attica shall be stricken from the Amended Complaint;<sup>1</sup> and

c. as Judge Engelmayer has additionally found that Plaintiff cannot demonstrate either irreparable harm or a likelihood of success on the merits with respect

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<sup>1</sup> This Court repeats Judge Engelmayer's previous instruction to Plaintiff that, if he wishes to pursue any claims arising out of his incarceration at Attica, he may file a new civil action in the United States District Court for the Western District of New York, which would be the proper venue for the assertion of such claims.

to his claim against Laura Mello (“Mello”), Records Access Officer for the New York City Department of Correction (“DOC”) for Mello’s alleged failure to respond to Plaintiff’s Freedom of Information Law (“FOIL”) request (which is a claim construed by the Court to arise under state, rather than federal, law) (*see* 7/30/21 Order), Plaintiff’s demand for injunctive relief on that claim shall also be stricken from the Amended Complaint.

2. Upon review of the Amended Complaint (Dkt. 18-1), this Court notes that, in the body of that pleading, Plaintiff has identified two defendants who are not listed in the caption. Those two defendants are Captain Corporan (“Corporan”), Supervising Captain for the Robert N. Davoren Complex at Riker’s Island (“RNDC”) (*see id.* ¶ 42), and Correction Officer Herrera (“Herrera”) of the RNDC (*see id.* ¶ 46). This Court deems the caption of the Amended Complaint amended to include those two defendants.

3. In light of the above, the Clerk of Court is instructed:

- a. to accept for filing the Proposed Amended Complaint (Dkt. 18-1) (deemed by this Court to constitute Plaintiff’s “Amended Complaint”), and to close, on the Docket of this action, the motion filed at Dkt. 18;
- b. to indicate on the Docket that the claims against defendants Morley, Arnold, and Williams are terminated;
- c. to list Corporan and Herrera as defendants on the Docket;

d. so as to allow Plaintiff to effect service of the Amended Complaint on the remaining defendants named in the Amended Complaint through the United States Marshals Service (“USMS”),<sup>2</sup>

i. to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of the defendants (including Corporan and Herrera) named in the Amended Complaint (Dkt. 18-1) (*see* attached service list), *except* for defendants Morley, Arnold, and Williams; and

ii. to issue a Summons and deliver to the USMS all of the paperwork necessary for the USMS to effect service upon defendants (again, *except* for defendants Morley, Arnold, and Williams); and

e. to mail a copy of this Order to Plaintiff, at the address reflected on the Docket and shown below.

4. The USMS is direct to serve a copy of this Order, together with the Summons and the Amended Complaint, on all defendants as to whom a Summons is issued.

Dated: New York, New York  
October 12, 2021

SO ORDERED



DEBRA FREEMAN  
United States Magistrate Judge

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<sup>2</sup> As Plaintiff has been granted permission to proceed *in forma pauperis* (“IFP”) (Dkt. 6), he is entitled to rely on the Court and the USMS to effect service of process in this case. *See Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P 4(c)(3) (providing that the court must order the USMS to serve if the plaintiff is authorized to proceed IFP).

Copies to:

Mr. Juan M. Vazquez  
DIN: 20A0062  
Attica Correctional Facility  
639 Exchange Street  
P.O. Box 149  
Attica, New York 14011-0149

**Defendants Service List**

City of New York  
GEORGIA M. PESTANA  
Corporation Counsel of the City of New York  
100 Church Street  
New York, New York 10007-2601

Cynthia Brann, Commissioner for the New York City Department of Correction (“NYCDOC”)  
75-20 Astoria Boulevard  
East Elmhurst, New York 11370

Dana Roth, Inspector General for the NYCDOC  
80 Maiden Lane  
New York, New York 10038

Derrick Cephas, Chairman for the Board of Corrections  
1 Centre Street, Room 2213  
New York, New York 10007

Joseph Caputo, Warden for Robert N. Davoren Complex at Riker’s Island (“RNDC”)  
11-11 Hazen Street  
East Elmhurst, New York 11370

Deputy Cort, Deputy Warden for RNDC  
11-11 Hazen Street  
East Elmhurst, New York 11370

Deputy Ferreras, Deputy Warden for RNDC  
*[no address provided by Plaintiff, but presumably the same address as that for defendant Cort]*

Captain Corporan, Supervising Captain for RNDC  
11-11 Hazen Street  
East Elmhurst, New York 11370

Captain Aponte, Supervising Captain for RNDC  
11-11 Hazen Street  
East Elmhurst, New York 11370

John/Jane Done, Supervising Legal Coordinator for the NYCDOC  
75-20 Astoria Boulevard  
East Elmhurst, New York 11370

Adjanie Cruz, Legal Coordinator for RNDC  
11-11 Hazen Street  
East Elmhurst, New York 11370

Correction Officer Usher  
11-11 Hazen Street  
East Elmhurst, New York 11370

Correction Officer Herrera  
11-11 Hazen Street  
East Elmhurst, New York 11370

Jean Rene, Warden for Otis Bantum Correctional Center at Riker's Island ("OBCC")  
16-00 Hazen Street  
East Elmhurst, New York 11370

Joseph Grima, Deputy Warden for OBCC  
16-00 Hazen Street  
East Elmhurst, New York 11370

John/Jane Doe, Deputy Warden for OBCC  
16-00 Hazen Street  
East Elmhurst, New York 11370

Captain Smalls, Supervising Captain for OBCC  
16-00 Hazen Street  
East Elmhurst, New York 11370

Correction Officer Hicks, Correction Officer for OBCC  
16-00 Hazen Street  
East Elmhurst, New York 11370

Correction Officer Alexander, Correction Officer for the Emergency Service Unit ("ESU")  
16-16 Hazen Street  
East Elmhurst, New York 11370

John Doe, Supervising Captain for ESU  
16-16 Hazen Street  
East Elmhurst, New York 11370

NYC Health & Hospitals, Inc.  
125 Worth Street, Suite 510  
New York, New York 10013

John/Jane Doe, Director of Health for the NYCDOC  
[no address provided by Plaintiff]

Laura Mello, Records Access Officer for the NYCDOC  
75-20 Astoria Boulevard  
East Elmhurst, New York 11370